Parkwood Developmental Center, Inc. *and* United Food and Commercial Workers International Union Local 1996, CLC.[1] Case 12–CA–22866

August 22, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND KIRSANOW

On February 10, 2004, Administrative Law Judge Pargen Robertson issued the attached decision. The General Counsel, the Charging Party, and the Respondent filed exceptions and supporting briefs. The General Counsel and the Respondent filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] except as specifically set forth below and to adopt the recommended Order as modified and set forth in full below.

[1] We have amended the caption to reflect the disaffiliation of the United Food and Commercial Workers International Union from the AFL–CIO effective July 29, 2005.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We agree with the judge, for the reasons stated in his decision, that the Respondent violated Sec. 8(a)(1) when Supervisor Johnny Jones told employee Cornelius Graham that because of the Union, employees were not receiving wage increases. However, we have corrected the judge's decision to reflect the fact that there is no basis for finding an additional similar violation, given that the judge did not credit Graham's testimony that Administrator Charles Templeton made a similar statement.

We agree with the judge, for the reasons stated in his decision, that the Respondent violated Sec. 8(a)(1) when Templeton told employee Pamela Kirkland that employees could not talk about the Union during company time.

We also agree with the judge, for the reasons stated in his decision, that the Respondent acted unlawfully by unilaterally changing unit employees' health insurance benefits to require employees to pay a portion of individual coverage premiums. (The judge inadvertently concluded that the Respondent's conduct violated Sec. 8(a)(3) and (1) instead of Sec. 8(a)(5) and (1). We have corrected the judge's decision.)

Background

The Respondent operates a developmental and training center for developmentally disabled patients. The Respondent and the Union were parties to a collective-bargaining agreement that was effective from March 9, 2001, through March 8, 2003.

On December 2, 2002, the Respondent received a petition from a majority of the bargaining unit employees stating that they no longer wished to be represented by the Union.[4] On that same date, the Respondent sent the Union a letter advising that the Respondent had received objective evidence from a majority of employees that they no longer wished to be represented by the Union and that the Respondent was withdrawing recognition effective on the expiration date of the existing collective-bargaining agreement. The Respondent informed the Union that it would continue to apply the collective-bargaining agreement until its expiration, but that it would not enter into any negotiations for a successor agreement.

Sometime later, the Union gathered signatures on a petition that read as follows:

> I authorize the United Food and Commercial Workers Union Local 1996 to act as my bargaining representative and to represent me concerning my wages, hours and working conditions with my employer Parkwood Developmental Center. I revoke, rescind and cancel any previous statements that I might have made to the contrary.[5]

As a further demonstration that a majority of unit employees sought continued representation, the Union collected authorization cards from employees. The Union delivered its evidence of majority support to the Respondent on March 7, 2003—the day before the expiration of the collective-bargaining agreement. That same day, the Respondent sent a letter to the Union indicating that it would not continue to recognize the Union. The Respondent has not recognized the Union since March 8, 2003.

[4] The parties stipulated that the signatures appearing on the petition are authentic and that the signatures represent a majority of the employees in the bargaining unit as of that date.

Contrary to the judge's decision, the General Counsel did not argue at the hearing or in its brief that the petition had been tainted by the Respondent's 8(a)(1) violations.

[5] The parties stipulated that the signatures appearing on the petition are authentic and that the signatures represent a majority of the employees in the bargaining unit as of that date.

Analysis

Withdrawal of Recognition

In evaluating whether the Respondent acted unlawfully in withdrawing recognition from the Union on March 8, 2003, we apply the standard established in *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001), under which the Respondent must show that the Union had actually lost its majority status when the Respondent withdrew recognition.[6] See *Port Printing Ad & Specialties*, 344 NLRB No. 34 (2005), enfd. sub nom. mem. *NLRB v. Seaport Printing Ad Specialties, Inc.*, No. 05-60347, 2006 WL 2092499 (5th Cir. 2006). Contrary to the judge, we find that the Respondent unlawfully withdrew recognition from the Union.[7]

Under *Levitz*, an "employer may rebut the continuing presumption of an incumbent union's majority status, and unilaterally withdraw recognition, only on a showing that the union has, in fact, lost the support of a majority of the employees in the bargaining unit." 333 NLRB at 725. As the *Levitz* Board explained:

> [A]n employer with objective evidence that the union has lost majority support—for example, a petition signed by a majority of the employees in the bargaining unit—withdraws recognition at its peril. If the union contests the withdrawal of recognition in an unfair labor practice proceeding, the employer will have to prove by a preponderance of the evidence that the union had, in fact, lost majority support *at the time the employer withdrew recognition.* [Id., emphasis added.]

Applying these principles, we find that the operative date for the Respondent's withdrawal of recognition in this case was not December 2, 2002—when the Respondent, based on an employee petition, announced that it would withdraw recognition when the collective-bargaining agreement expired—but rather March 8, 2003, the contract expiration date. By that latter date, as explained, the Union had demonstrated to the Respondent that it enjoyed majority support.[8] At most, then, the Respondent had conflicting evidence concerning the employees' support for the Union. Although such evidence might have supported the filing of an RM election petition with the Board under the good-faith reasonable-uncertainty standard announced in *Levitz* for such petitions, it was not sufficient to support a withdrawal of recognition. See *Levitz*, 333 NLRB at 727–729.

In its exceptions, the Respondent contends that it actually withdrew recognition on December 2, when the only evidence before it pointed to a loss of majority status, and that it was entitled to withhold recognition thereafter pursuant to the "anticipatory withdrawal of recognition" line of cases. See, e.g., *Abbey Medical*, 264 NLRB 969 (1982), enfd. mem. 709 F.2d 1514 (9th Cir. 1983); *Burger Pits*, 273 NLRB 1001 (1984), enfd. sub nom. *HERE v. NLRB*, 785 F.2d 796 (9th Cir. 1986). In essence, the Respondent argues that, having announced on December 2 that it was withdrawing recognition, it was entitled to rely on the evidence existing at that time and to ignore any contradictory evidence that might be presented later. There is no merit in this contention.

The Respondent did not, and could not, withdraw recognition on December 2; that would have been unlawful regardless of the evidence of loss of majority support for the Union.[9] Instead, it announced on December 2 that it was withdrawing recognition effective March 8, when the contract expired.[10] And, in fact, the Respondent did withdraw recognition on March 8. Accordingly, the Respondent's action was lawful only if, as of March 8, the Union had lost majority support. *Levitz*, 333 NLRB at 725. Thus, in determining whether to follow through on its previously announced intention to withdraw recogni-

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[6] Chairman Battista and Member Kirsanow did not participate in *Levitz* and express no view as to whether it was correctly decided. In this regard, they note that no party contends that *Levitz* should be overruled.

[7] The judge correctly determined that the Respondent's withdrawal of recognition must be analyzed under the principles set forth in *Levitz*. However, the judge then went on to analyze the case under the pre-*Levitz* standard. Thus, we disavow the judge's analysis to the extent it conflicts with the analysis here.

[8] Contrary to the Respondent's contention, the Union's evidence of continuing majority support was gathered in a timely fashion.

Where, as here, the Union does not have majority status at the time when the employer announces its intention to withdraw recognition, Chairman Battista would require that the union present, within a reasonable time, any evidence of reacquisition of majority status. In this case, that reasonable period is properly defined by the period between the beginning of the open period of the contract and the expiration of that contract. Because the Union presented the employer with its evidence on the outer edge of that period, Chairman Battista finds that its evidence was timely presented.

[9] It is well established that a union enjoys a conclusive presumption of majority status during the life of a collective-bargaining agreement (up to 3 years). See *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 786 (1996). Thus, because the contract was still in effect on December 2, the Respondent could not have withdrawn recognition effective that day, or at any time before March 8.

[10] To this point, the Respondent acted lawfully. Under the "anticipatory withdrawal" cases, an employer faced with evidence that an incumbent union has lost majority support during the term of a collective-bargaining agreement may lawfully refuse to negotiate a successor agreement and announce that it will not recognize the union after the contract expires, provided that it complies with the existing contract in the interim. However, an employer's "withdrawal of recognition [is] as to—and only as to—negotiating a successor contract to the existing agreement." *Abbey Medical*, 264 NLRB at 969. Such an employer may not completely withdraw recognition until the contract expires because until then the union enjoys an irrebuttable presumption of majority status. See *Levitz*, 333 NLRB at 730 fn. 70.

tion, the Respondent could not rely solely on the evidence it had received on December 2.

Contrary to the Respondent's claim, we are not seeking to "obliterate" or "render moot" the ability of employers to engage in anticipatory withdrawals of recognition. An employer can still follow through on its anticipatory withdrawal of recognition if it can prove actual loss of majority support on the date that recognition is subsequently withdrawn. Nor would the announcement of an anticipatory withdrawal be unlawful, in and of itself, if it were properly supported by objective evidence at the time of the announcement and that evidence survived any timely challenge.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall order the Respondent to cease and desist from engaging in such conduct and to take certain steps to effectuate the policies of the Act. We shall order the Respondent to reinstate the health insurance plan it had prior to February 1, 2003. In addition, we shall order that the Respondent make whole the unit employees for any losses they may have suffered as a result of the Respondent's unilateral change in its health insurance benefits, in accordance with *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F. 2d 502 (6th Cir. 1971). Interest shall be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall also order the Respondent, if requested by the Union, to rescind any unilateral changes in wages, benefits, and conditions of employment implemented since the withdrawal of recognition on March 8, 2003. Nothing in this Order, however, shall be construed to require the Respondent to withdraw any benefit previously granted unless requested by the Union. See *Taft Broadcasting Co.*, 264 NLRB 185 fn. 6 (1982).

Finally, having found that the Respondent unlawfully withdrew recognition of the Union, we shall order that the Respondent bargain with the Union in the bargaining unit described below, with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

For the reasons set forth in *Caterair International*, 322 NLRB 64 (1996), we find that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition. We adhere to the view that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68.[11]

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Bldg. Material v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, supra, the court summarized its requirement that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: '(1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act.'" Id. at 738.

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, supra, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's withdrawal of recognition and resulting refusal to bargain with the Union for a successor collective-bargaining agreement. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation. Since the Union was never given an opportunity to reach a successor agreement with

[11] Chairman Battista does not agree with the view expressed in *Caterair International*, supra, that an affirmative bargaining order is "the traditional, appropriate remedy" for an 8(a)(5) violation. He agrees with the District of Columbia Circuit that a case-by-case analysis is required to determine if the remedy is appropriate. *Saginaw Control & Engineering, Inc.*, 339 NLRB 541, 546 fn. 8 (2003). He recognizes, however, that the view expressed in *Caterair International* represents extant Board law. See *Flying Foods*, 345 NLRB No. 10, slip op. at 10 fn. 23 (2005).

Member Kirsanow observes that the Board's practice of routinely ordering bargaining to remedy an unlawful refusal to bargain is of exceptionally long duration and was unanimously reaffirmed in *Caterair International* after full briefing and oral argument, and no party challenges that settled practice here. On this basis, Member Kirsanow joins Member Liebman in adhering to the *Caterair* doctrine. As to the merits of that doctrine, Member Kirsanow will reserve judgment until the issue is presented in a case in which it is fully briefed by the parties, and preferably also by amici.

the Respondent, it is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees will be able to fairly assess for themselves the Union's effectiveness as a bargaining representative.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining in the hope of discouraging support for the Union. It also ensures that the Union will not be pressured by the Respondent's withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order. Providing this temporary period of insulated bargaining will also afford employees a fair opportunity to assess the Union's performance in an atmosphere free of the Respondent's unlawful conduct.

(3) A cease-and-desist order, alone, would be inadequate to remedy the Respondent's withdrawal of recognition and refusal to bargain with the Union because it would allow another such challenge to the Union's majority status before the taint of the Respondent's previous unlawful withdrawal of recognition dissipated. Allowing another challenge to the Union's majority status without a reasonable period for bargaining would be particularly unfair in light of the fact that the litigation of the Union's charges took several years and as a result, the Union needs to reestablish its representative status with unit employees. Indeed, permitting a decertification petition to be filed immediately might very well allow the Respondent to profit from its own unlawful conduct. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the violations in this case.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Parkwood Developmental Center, Valdosta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain in good faith with United Food and Commercial Workers International Union Local 1996 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time employees employed at Parkwood Developmental Center, Valdosta, Georgia, including custodians, housekeeping aides, unit housekeepers, laundry employees, maintenance employees, car/bus drivers, horticulturists, cooks, assistant cooks, dietary aides, dietary AM/PM janitors, social work technicians, direct care staff employees, behavior program aides, medication nurses, treatment nurses, infection control nurses, physical health records nurses, transportation aides, sensorimotor therapists, but excluding receptionist, secretary to the Administrator, purchase coordinator, accounting/bookkeeper, QMRP'S and QMR records auditor, clinical records staff, computer data and program specialists, team leader supervisors, computer specialist and assistant to Personnel Director, professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Telling its employees that because of the Union employees were not receiving wage increases.

(c) Telling its employees that they cannot talk about the Union during company time.

(d) Unilaterally changing the terms of its collective-bargaining agreement by charging employees for individual health care coverage.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively with the Union as the exclusive representative of the Respondent's employees in the above unit with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

(b) Reinstate the health insurance plan as it existed prior to February 1, 2003, and make whole unit employees for any losses they may have suffered as a result of the unilateral change, with interest, in the manner set forth in the remedy section of this decision.

(c) If the Union requests, cancel any unilateral changes made to wages, hours, or other terms and conditions of employment since its withdrawal of recognition of the Union on March 8, 2003; provided, however, that nothing in this Order shall be construed as requiring the Respondent to rescind any benefit previously granted unless the Union requests such action.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Valdosta, Georgia, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 21, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 22, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter N. Kirsanow Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain in good faith with United Food and Commercial Workers International Union Local 1996 (the Union) as collective-bargaining representative of the employees in the following bargaining unit:

> All full-time and regular part-time employees employed at Parkwood Developmental Center, Valdosta, Georgia, including custodians, housekeeping aides, unit housekeepers, laundry employees, maintenance employees, car/bus drivers, horticulturists, cooks, assistant cooks, dietary aides, dietary AM/PM janitors, social work technicians, direct care staff employees, behavior program aides, medication nurses, treatment nurses, infection control nurses, physical health records nurses, transportation aides, sensorimotor therapists, but excluding receptionist, secretary to the Administrator, purchase coordinator, accounting/bookkeeper, QMRP'S and QMR records auditor, clinical records staff, computer data and program specialists, team leader supervisors, computer specialist and assistant to Personnel Director, professional employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT tell our employees that they are not receiving wage increases because of the Union.

WE WILL NOT tell our employees they cannot talk about the Union during company time.

WE WILL NOT unilaterally change the terms of our collective-bargaining agreement with the Union by charging our employees for individual health insurance coverage.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL recognize and, on request, bargain collectively with the Union as the exclusive representative of our employees in the above unit with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

WE WILL, upon request, reinstate the health insurance plan as it existed prior to February 1, 2003, and WE WILL make whole unit employees for any losses they may have suffered as a result of our unlawful unilateral change, with interest.

WE WILL, on the Union's request, cancel and rescind any unilaterally implemented changes in wages, benefits, and conditions of employment since our withdrawal of recognition of the Union on March 8, 2003.

PARKWOOD DEVELOPMENTAL CENTER, INC.

Chris Zerby, Esq., for the General Counsel.
Clifford H. Nelson Jr., Esq., for the Respondent.
James D. Fagan Jr., Esq., for the Charging Party.

DECISION

PARGEN ROBERTSON, Administrative Law Judge. A hearing was held in Valdosta, Georgia, on October 29, 2003. I have considered the entire record and briefs filed by Respondent and the General Counsel in reaching this decision.

I. JURISDICTION

At material times, Respondent has been a Georgia corporation with an office and principal place of business in Valdosta, Georgia, where it has been engaged in the operation of a developmental center for handicapped residents. In conducting its business operations, Respondent annually derives gross revenue in excess of $100,000. Annually, in conducting its business operations, Respondent purchases and receives goods valued in excess of $50,000 at its Valdosta facility directly from points outside Georgia. Respondent has been an employer engaged in commerce within the meaning of the National Labor Relations Act (the Act) at all material times.

II. LABOR ORGANIZATION

At material times, the Charging Party (the Union) has been a labor organization within the meaning of the Act.

III. BARGAINING UNIT

The following employees constitute a unit appropriate for the purposes of collective bargaining:

> All full-time and regular part-time employees employed at Parkwood Developmental Center, Valdosta, Georgia, including custodians, housekeeping aids, unit housekeepers, laundry employees, maintenance employees, car/bus drivers, horticulturists, cooks, assistant cooks, dietary aides, dietary AM/PM janitors, social work technicians, direct care staff employees, behavior program aides, medication nurses, treatment nurses, infection control nurses, physical health records nurses, transportation aides, sensorimotor therapists, but excluding receptionist, secretary to the Administrator, purchase coordinator, accounting/bookkeeper, QMRP'S and QMR records auditor, clinical records staff, computer data and program specialists, team leader supervisors, computer specialist and assistant to Personnel Director, professional employees, managerial employees, guards and supervisors as defined in the Act.

IV. THE DISPUTED ISSUES

Briefly stated, this matter originated when Respondent received a petition from a majority of its unit employees in December 2002. Respondent then notified the Union that it was withdrawing recognition at the end of its existing contract. The General Counsel contended the employees' petition was tainted by unfair labor practices. Subsequently, in January 2003 Respondent announced allegedly unlawful changes in its collective-bargaining agreement.

On March 7, 2003, the Union informed Respondent that it represented a majority of the unit employees and supplied the Union with evidence supporting that claim. Respondent replied that it did not believe the Union represented a majority. The collective-bargaining agreement terminated on March 8, 2003.

A. Section 8(a)(1) and related issues: November 21, 2002

Employee Cornelius Graham testified that he signed a petition rejecting the Union. He signed that petition on November 21, 2002, in the maintenance office. There were other employees in the maintenance office at that time along with Supervisor Johnny Jones. After Graham signed the petition and was leaving Johnny Jones said, "[T]hanks for your support." Later, that same afternoon, Graham walked up to Johnny Jones in the parking lot and asked Jones, "[W]hat's going on with the union?" Jones replied, "We are not making any raises due to the union and just we, you know, trying to see if we can get it out."

Cornelius Graham also testified that he went to Charles Templeton's office on November 21, and asked Templeton what was going on with the union and why was it trying to be voted out. Templeton showed papers from a red folder that illustrated wages at Respondent and at other companies. Graham testified the documents showed wages at the other companies were higher than wages at Respondent. Templeton said the first year contract was a big success and that was why they were trying to get the Union out. Charles Templeton admitted that Graham did come by his office around November 21, 2002. Templeton denied that he had the conversation testified to by Graham. He does maintain a red folder and he showed Graham that folder. However, the only document he keeps in that folder is the collective-bargaining agreement. Templeton denied that he told any employee the employees would not receive wage increases because of the Union.

1. December 2, 2002

The General Counsel alleged and Respondent admitted that the Union was the exclusive collective-bargaining representative of the unit employees. On December 2, 2002, Respondent wrote the Union that it had received objective evidence[1] that a majority of its unit employees no longer wished to be represented by the Union and that it would withdraw recognition effective March 8, 2003.[2]

2. Second week of December 2002

Pamela Kirkland testified that Charles Templeton called her into his office during the second week of December 2002. Templeton told Kirkland that this is not a reprimand but under no circumstances is union business to be discussed on company time. Templeton was asked on direct examination if he told Kirkland she could not engage in union activities on company time. Templeton answered yes. He subsequently explained that he was trying to enforce existing written rules regarding solicitation and distribution and that those rules prohibit solicitation on company worktime. He testified that he told Kirkland that she could not discuss union business or any other kind of solicitation on worktime.

Findings: Credibility

Testimony given by Charles Templeton, Cornelius Graham, and Pamela Kirkland is critical to an analysis of the issues herein. Charles Templeton is Respondent's administrator. Counsel for the General Counsel alleged that Templeton engaged in unlawful conduct by his comments to Graham and Kirkland. Additionally, the General Counsel alleged that supervisor Johnny Jones' comments to Cornelius Graham were unlawful. Jones did not testify.

As shown above, Cornelius Graham testified and Templeton admitted that Graham went to Templeton's office on November 21, 2002. Templeton denied that he had the conversation testified to by Graham. Templeton denied that he told any employee they would not receive wage increases because of the Union.

Graham appeared unsure of his testimony regarding his conversation with Templeton. He testified that Templeton said the first year of the collective-bargaining contract had been a big success and Templeton showed him wages of other employers. In view of the full record and their demeanor, I credit Templeton and do not credit Graham to the extent their testimony conflicts. As to Graham's testimony regarding Johnny Jones, I credit Graham. Jones did not testify and Graham's testimony in that regard stands unrebutted.

Pamela Kirkland testified that Templeton called her into his office during the second week of December 2002. Templeton told Kirkland that this is not a reprimand but under no circumstances is union business to be discussed on company time. Charles Templeton testified that he did have a conversation as related by Pamela Kirkland. After initially admitting that he told Kirkland she could not discuss the Union on company time, he testified that he told Kirkland that she could not discuss union business or any other kind of solicitation on worktime.

Respondent pointed to its employees' handbook (R. Exh. 1) as supporting Templeton's version of his conversation with Kirkland. At page 35 the handbook contains a no solicitation rule which prohibits solicitation during worktime. Worktime is explained in that rule: "'Work time' does not include meal time or break time or other specified periods during the workday when employees are properly not engaged in performing their duties."

However, in view of the entire record and especially in view of the demeanor of Templeton and Kirkland, along with Templeton's initial admission that Kirkland testified correctly, I credit the testimony of Kirkland.

3. Supervisor Jones

It is alleged that supervisor Johnny Jones told an employee that employees were not receiving wage increases because of the Union. As shown above, that allegation was supported by substantial evidence. Cornelius Graham testified[3] that after he signed the petition to reject the Union he walked up to Jones in the parking lot and asked what was going on with the Union. At that time Jones was aware of Graham having signed the petition against the Union. Jones replied, "We are not making any raises due to the union and just we, you know, trying to see if we can get it out." Jones' comments included a threat that employees had lost wage increases because of the Union and constituted a violation of Section 8(a)(1).

4. Administrator Charles O. Templeton: November 21:

It was alleged that Templeton also told Cornelius Graham that employees were not receiving wage increases because of the Union. As shown above, I did not credit Graham's testimony regarding his November 21 meeting with Templeton. Instead I credited Templeton's testimony. That testimony showed that he did engage in conduct which constituted a violation of Section 8(a)(1).

5. Second week of December

As shown above, I credited the testimony of Pamela Kirkland that Charles Templeton told her he could not discuss union business on company time. Despite the narrow wording of its written no-solicitation rule, Templeton's comment included a cautioning that is too broad and constituted an additional violation of Section 8(a)(1).

6. The questions regarding the December 2 petition

Respondent received a petition on December 2, 2002, signed by a majority of its bargaining unit employees. That petition (GC Exh. 9) was captioned, "We, The employees of Parkwood Development Center do not want to be represented by the United Food and Commercial Workers Union Local 1996." Respondent wrote the Union that it had received the petition and that it would withdraw recognition at the end of the contract on March 8, 2003.

[1] There is no dispute that Respondent received a petition signed by a majority of its unit employees stating their desire to not be represented by the Union (GC Exh. 9).

[2] The collective-bargaining agreement expired on March 8, 2003.

[3] Jones did not testify and Graham's testimony regarding Jones was not disputed. Respondent did show that even though Jones was a supervisor he was not a supervisor in maintenance.

There is no dispute that Respondent received the unit employees' petition on December 2. However, the General Counsel contended the petition was tainted by Respondent's unfair labor practices.

As shown above, I find that Respondent engaged on one violation of Section 8(a)(1) before Respondent received its employees' petition. That violation occurred on November 21 when Supervisor Jones told Cornelius Graham the employees were not making raises due to the Union and he wanted to get the Union out. The second unfair labor practice which involved Administrator Templeton and Pamela Kirkland, occurred after Respondent received the December 2 petition and, for that reason, could not have tainted the petition.

As to the November 21 conversation between Jones and Graham, that conversation occurred after Cornelius Graham signed the petition against the Union. Graham testified that several people including supervisor Jones were present in the room where he signed the petition. Jones had said nothing to Graham before Graham signed the petition. After Graham signed the petition Jones thanked him.

Later that same day Graham approached Jones and asked Jones about the Union. At that time Jones made his 8(a)(1) comment.

Those findings show that the November 21 8(a)(1) violation did not taint the antiunion petition. Obviously, the unfair labor practice did not influence Cornelius Graham. Graham signed the petition before Jones' 8(a)(1) comment.

Moreover, there was no showing that any other employee that signed the petition was aware of Jones' November 21 comments to Graham. Therefore, I find the evidence failed to show that any unfair labor practice influenced one or more employees to sign the antiunion petition. There was no causal relationship between the unlawful conduct and the petition. *Master Slack Corp*., 271 NLRB 78 (1984).

B. The 8(a)(5) allegations: January 2003

The General Counsel alleged that Respondent engaged in unfair labor practices in January 2003 by changing its health insurance program by charging its employees a premium without notifying or first bargaining with the Union.

There is no factual dispute but that Respondent changed its health insurance program by charging its unit employees each pay period for a portion of individual coverage premiums.[4] That change was announced to employees on January 14, 2003. It became effective on February 1, 2003.

There is no dispute but that the collective-bargaining agreement did not expire until March 8, 2003. The collective-bargaining agreement included the following regarding health insurance at article 23:

> The Employer will provide eligible employees coverage under the health insurance program afforded to other employees at the facility. There is no charge for individual coverage under this program. Dependent/family coverage will be made available if employees elect to pay the group rates for such additional coverage. The Employer retains the ability to provide similar coverage through another insurance carrier, as well as to change coverage terms and/or carriers if such action were taken on a corporate-wide basis.

Respondent did not notify or bargain with the Union regarding that change in insurance premiums.[5] Before the change, unit employees were not required to pay anything for individual health insurance coverage.

The Union filed a grievance over Respondent's health insurance change. The grievance went to arbitration and the arbitrator found the grievance had merit. The arbitrator's award included restoration of the premiums charged unit employees from February 1 until the expiration of the collective-bargaining agreement on March 8.

1. March 8, 2003

On March 7, 2003 the Union wrote Respondent:

> Enclosed is proof that United Food and Commercial Workers Union Local 1996 is the majority representative of the employees in the bargaining unit at your facility. The workers have revoked the petitions previously submitted to you. Enclosed are copies of those revocations. The United Food and Commercial Workers Union Local 1996 demands that you commence bargaining for a new collective bargaining agreement and you continue to recognize the union. . . . [GC Exh. 5.]

Respondent replied on March 7:

> *. . . Please be advised that PDC does not believe that Local 1996 represents a majority of its employees and hereby denies your demand for recognition. Under these circumstances, if the Union believes that it has the support of a majority of employees, you are certainly familiar with the avenues available for pursuing representation rights under the National Labor Relations Act.

2. Findings: Credibility

There are no significant, material factual disputes regarding the January and March 2003 allegations.

3. Conclusions: January 2003

Respondent changed its health insurance program effective February 1, 2003. Before February 1 unit employees were not required to pay for individual health insurance. From February 1 unit employees were required to pay a portion of the premiums each per pay period for individual health insurance.

Respondent argued that the February 1 change was authorized under the terms of its collective-bargaining contract. Since it applied the change to all employees its action fell within the enabling provision of the last sentence of article 23:

> The Employer retains the ability to provide similar coverage through another insurance carrier, as well as to change coverage terms and/or carriers if such action were taken on a corporate-wide basis.

[4] From February 1, 2003, unit employees were charged $20 for medical coverage, $8.88 for dental coverage, and $1.for vision coverage, per pay period.

[5] Respondent argued that its notification to unit employees constituted notice to the Union.

Respondent offered parole evidence that it intended to extend the same health coverage to all employees and its February 1 change in individual insurance premiums did involve all employees.

Parole evidence may be relevant where a contract is ambiguous. In this instance I am convinced that the relevant contract provision was not ambiguous and parole evidence regarding Respondent's intent is not relevant. *Sansia, Inc.*, 323 NLRB 107 (1997). The key here is the contract provision that there "is no charge for individual coverage." Moreover, nothing in the health insurance provisions of the contract permitted Respondent to change employees' premiums. The only changes mentioned regard the right of Respondent to change insurance carriers and to change the coverage terms.

The contract continued to apply to unit employees until March 8 and the Union should have been given an opportunity to bargain before Respondent changed to a policy of charging for individual health insurance coverage.

4. March 8, 2003

Respondent notified the Union on December 2, 2002, that it had objective evidence that a majority of its unit employees wished to no longer be represented by the Union. It gave that notice to the Union after receiving a petition signed by a majority of its unit employees.

The Board considered the question of what is timely filing of a petition to remove a union representing employees of a health care institution,[6] in *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). There, the Board held that all petitions filed more than 90 days but not over 120 days before the terminal date of any contract will hereafter be found timely. Here, the employees submitted their petition to Respondent on December 2. That was 96 days before the contract expired on March 8, 2003. Therefore, Respondent was justified in treating the employee's petition as being timely.

On March 7, 2003, the Union wrote Respondent that a majority of the unit employees desired union representation. The Union included in that letter evidence of majority representation. Some of the employees showed that they revoked their signatures to the December 2 petition to get rid of the Union. Respondent replied to the Union that it did not believe the Union represented a majority of its unit employees.

5. Determinations: January

In view of the full record, I find Respondent had a duty to notify and bargain on demand with the Union before making changes to the collective-bargaining agreement during that agreement's term. Individual medical insurance was one of the provisions of that agreement and Respondent's changed that portion of the contract, which stated there "is no charge for individual coverage" under the health insurance program. From February 1, 2003, unit employees were charged for individual coverage under the health insurance program. Respondent's unilateral change constitutes a violation of Section 8(a)(1) and (5). See *Laborers Health & Welfare Trust Fund for Northern California v. Advanced Lightweight Concrete Co.*, 484 U.S. 539 (1988).

6. March

In *Levitz Furniture Co.*, 333 NLRB 717 (2001), the Board considered a factual situation similar to the instant case. There, like here, the employer and the union were parties to a collective-bargaining agreement. That contact expired on January 31, 1995. On December 1, 1994, the employer received a petition signed by a majority of its unit employees stating that they did not wish to be represented by the union. On December 2, 1994, the employer informed the union that it had received objective evidence that the union had lost majority support and that it would withdraw recognition effective at the end of the collective-bargaining agreement.

On December 14, 1994, the union informed the employer that it had objective evidence of its majority status and was ready at any time to demonstrate that fact. The employer acknowledged the union's claim on December 21 but repeated that it had objective evidence that the union had lost majority support and stated that, except as required by the contract, it would no longer recognize the union. The Board found that the employer continued to honor the contract until it expired on January 31, 1995. When the contract expired the employer withdrew recognition.

The Board found no refusal to bargain in *Levitz*, supra, stating:

> We find that the Respondent has demonstrated that it had a good-faith uncertainty as to the Union's continued majority status when it withdrew recognition on February 1. The Respondent had previously received a petition, apparently signed by a majority of the unit employees, stating that they no longer wished to be represented by the Union. The Union later offered to prove that it still had majority support. But even if the Respondent had inspected the Union's claimed evidence, and even if that evidence had supported the Union's assertion, it would simply have produced a conflict with the earlier petition. Thus, the Respondent could still reasonably have been uncertain about the Union's majority status. Under *Allentown Mack* [*Sales & Services v. NLRB*, 522 U.S. 359 (1998)], then, the Respondent was warranted in withdrawing recognition.

There are at least two differences between *Levitz* and the instant case. Unlike *Levitz*, Respondent did not fully comply with all the contractual terms before the contract expired. Here, as shown above, Respondent made a unilateral change by unlawfully changing it health insurance policy to require employee contributions. Additionally, the union in *Levitz* reacted more quickly to the employer's declaration that it would withdraw recognition at the expiration of the contract. There, the union responded in 12 days. Here, the Union did not respond until the day before the contract expired. That was over 3 months after the Respondent notified the Union it would withdraw recognition.

Nevertheless, there is no doubt that *Levitz* is the controlling law in this instance. However, that are inconsistencies between the Board's holding in *Levitz* and the Board's announcement in

[6] There is no dispute but that Respondent was a health care institution at all material times.

Levitz as to prospective rulings. There, the Board stated among other things, that the,

> court's decision in *Allentown Mack* had a significant impact on the Board's long established scheme. As a result of that decision, employers may now withdraw recognition from unions based on reasonable uncertainty, ... [*Levitz Furniture Co.*, 333 NLRB at 722.]

The Board then considered in its analysis, whether it should apply different standards in the future, regarding the questions of (1) withdrawal of recognition; (2) the filing of a RM petition; and (3) the polling of employees. The Board decided to apply one standard when an employer has withdrawn recognition, another standard when an employer filed a RM petition, and to delay in deciding upon a standard in polling cases.

The standard the Board decided to apply in withdrawal of recognition cases, is stated at *Levitz*, 333 NLRB at 722:

> We recognize that here are a multitude of options, each with supporters and critics. We have carefully considered those numerous possibilities in light of the Act's text and policies. In our view, there is no basis in either law or policy for allowing an employer to withdraw recognition from an incumbent union that retains the support of a majority of the unit employees, even on a good faith belief that majority support has been lost. Accordingly, we shall no longer allow an employer to withdraw recognition unless it can prove that an incumbent union has, in fact, lost majority support.

Then, in the next paragraph, the Board stated its determination for cases involving the filing of a RM petition:

> While adopting a more stringent standard for withdrawals of recognition, we find it appropriate to adopt a different, more lenient standard for obtaining RM elections. Thus, we emphasize that Board-conducted elections are the preferred way to resolve questions regarding employees' support for unions. For that reason, we find it appropriate to abandon the unitary standard for withdrawing recognition and processing RM petitions. Instead, we shall allow employers to obtain RM elections by demonstrating reasonable good-faith uncertainty as to incumbent unions' continued majority status.

In *Levitz* as in the instant case, there was no question of Respondent filing a RM petition. Instead the Board was concerned with a withdrawal of recognition and it held that *Levitz* did not act unlawfully because it had an uncertainty as to the majority support of the union. However, the Board announced that in the future it would apply a different standard for withdrawal of recognition cases. Instead of concerning itself with the belief of the employer it would look to the evidence regarding majority support. Only when evidence revealed that a union had lost majority support would the employer be justified in withdrawing recognition.

I shall apply the prospective standard announced by the Board for withdrawal of recognition regarding Respondent's December 2 notice to the Union. That standard set out in the *Levitz* decision was "we shall no longer allow an employer to withdraw recognition unless it can prove that an incumbent union has, in fact, lost majority support." The uncontested evidence included a petition of the employees submitted to Respondent on December 2 showed that the Union had lost its majority support.

There were no negotiations nor were there requests to negotiate, after Respondent notified the Union of its plan to withdraw recognition.

On March 7, 2003, the Union wrote Respondent that it had majority representation and it included proof of its claim. Respondent replied that same day that it doubted the Union's claim and would not recognize the Union.

The Union argued that March 7 proof rebutted the December 2 evidence that the Union had lost majority status. However, that claim is illogical. At most, the March 7 events illustrated that perhaps some of the unit employees changed their minds after December 2. Moreover, a similar situation existed in *Levitz* and the Board did not find that the subsequent petition supporting the Union had compromised the employees' earlier petition against the Union.

From December Respondent was apparently aware only that the Union had lost its majority. That issue was called into question over 3 months later when the Union submitted evidence that a majority of the unit employees wanted union representation.

It is apparent that Respondent was justified in expressing doubt at to the Union's claim in its reply letter of March 7.[7] Under both the actual holding in *Levitz* which found no unfair labor practice on the basis of the General Counsel's failure to prove that *Levitz* lacked a reasonable uncertainty and under the prospective standard the *Levitz* Board applied to RM petition rights, Respondent would prevail.

Additionally, I must consider the Supreme Court's ruling in *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359 (1998). There, the issue involved an employer's poll of unit employees. In brief, the Court accepted that the union was an incumbent union of a successor employer and that the union had made a demand for recognition on claim of majority. The employer replied that it had a good-faith doubt as to support of the union among the employees but that it had arranged for an independent poll by secret ballot of its unit employees. That poll resulted in a loss for the union and in subsequent unfair labor practices proceedings the Board found the employer had unlawfully withdrawn recognition.

The Court held among other things that doubt should mean uncertainty. It stated,

> [T]he question presented for review, therefore, is whether, on the evidence presented to the Board, a reasonable jury could have found that Allentown lacked a genuine, reasonable uncertainty about whether Local 724 enjoyed the continuing support of a majority of unit employees. In our view, the answer is no. The Board's finding to the contrary rests on a refusal to credit probative circumstantial evidence, and on evidentiary demands that go beyond the substantive standard the Board purports to apply. [522 U.S. at 368.]

[7] In *Levitz* the employer expressed doubt after the Union offered to prove its majority support.

The Court went on to hold that the Board's reasonable doubt standard for polling employees is facially rational and consistent with the Act but its finding that the employer is that case lacked such a doubt was not supported by substantial evidence on the record as a whole.

Here, the question may be *should the applied standard require evidence of lost majority or evidence of uncertainty*.

The evidence in this particular case lends practical support to application of the uncertainty standard. On March 7 (i.e., the day before the contract expired), the Union presented evidence of majority support. From receipt of that claim, Respondent was justified in claiming uncertainty in view of both the Union's March 7 letter and its receipt of a petition showing lack of majority support on December 2. However, under a strict reading of the Board's new standard for withdrawal of recognition, Respondent may have engaged in unfair labor practices by withdrawing recognition on or after March 7. The evidence did not clearly establish that a majority of the unit employees did not support the Union on that date.

The relevant standard in this case is did the Union actually lose its majority support. The evidence shows that in December 2002 Respondent received an untainted petition signed by a majority of its unit employees. The petition showed that the Union lost its majority and at that time Respondent announced that it was withdrawing recognition. Respondent met the *Levitz* prospective standard for withdrawal of recognition on December 2, 2002.

The situation was different on March 7, 2003. At that time the evidence was unclear whether the Union had actually lost its majority support. Further analysis is necessary to determine whether Respondent committed an unfair labor practice by failing to recognize the Union on or after March 7.

The question as of March 7, may be did *Respondent engage in unlawful conduct by refusing to rescind its prior announced plan to withdraw recognition*. At that time, in accord with *Levitz*, there was a "reasonable uncertainty" that the Union represented a majority.[8] Although clear evidence of a lost majority was lacking on March 7, some consideration must be given to the converse of the "withdrawal of recognition" standard. If Respondent had recognized the Union on March 7 it would have done so despite its confusion or uncertainty about whether the Union enjoyed a majority and it would have possibly subjected itself to an 8(a)(2) violation. Moreover, if Respondent had rescinded its withdrawal of recognition as announced on December 2, the unit employees would have been subjected to union representation regardless of their actual desire.

The record evidence showed that the Union had lost majority support at the time of Respondent December 2 announcement that it would withdraw recognition at the conclusion of the collective-bargaining agreement. The record evidence of subsequent events showed that a reasonable uncertainty was created on March 7 when the Union offered proof that it represented a majority of the unit employees. If Respondent had not made an earlier announcement of its plan to withdraw recognition, it is possible that it would have engaged in an illegal withdrawal of recognition if it had, for the first time, announced its withdrawal of recognition on March 8. That is true because on March 8 the evidence did not show without dispute or question, that the Union had lost majority support. In other words the evidence at that time did not satisfy the prospective standard for determining the legality of withdrawal of recognition under *Levitz*.

However, the undisputed record evidence showed that Respondent did make an earlier announcement that it would withdraw recognition. After receiving the employees' December 2 petition Respondent announced it would withdraw recognition on the March 8 expiration of the contract. At that time the evidence showed "*that an incumbent union has, in fact, lost majority support.*"

It appears that the situation that developed on March 7 when the Union wrote Respondent and offered proof that it represented a majority of unit employees, was unlike what was anticipated by the *Levitz* Board in announcing its prospective withdrawal of recognition standard. Instead of a situation where an employer withdrew recognition against a background of presumed majority such as under the contract bar rule, the unit employees by their December 2 petition, had shown that the Union did not have a majority. So, when the Union's March 7 letter created a reasonable uncertainty there was no presumption of majority. Instead, since December 2 the proof had been to the contrary.

Under those circumstances Respondent may have been legally foreclosed from rescinding its earlier declaration and recognizing the Union. Instead under the holdings in *Allentown* and *Levitz*, it may have been forced to view the situation as, at most, a reasonable uncertainty of representation. That reasonable uncertainty was cast against a background of evidence showing that the Union had lost majority status on or before December 2, 2002, when a majority of the unit employees petitioned against representation.

Of course, there was one avenue open to Respondent, which would not have involved a risk of unlawful conduct. That would have involved Respondent filing a RM petition. However, for whatever reason, Respondent did not file a representation petition. Moreover, neither did the Union file a representation petition on or after March 8.

The evidence here may not fit into the Board's prospective standard for withdrawal of recognition issues. However, I am convinced that the employees' December 2 petition followed by Respondent's immediate notice to the Union that it would withdraw recognition because of the Union's loss of majority, changed this matter from a "withdrawal of recognition" question. On March 7 when the Union offered proof that it then represented a majority, there was no presumption of union majority. In that situation, I am convinced that Respondent had a reasonable uncertainty of the Union's majority and it could not have legally recognized the Union.

Moreover, the evidence here is very similar to the situation in *Levitz*. Even though the union in *Levitz* as the Union here, subsequently offered proof of majority, the Board found no violation. I am not convinced that the Board intended to set a

[8] As in *Allentown Mack Sales*, Respondent had received conflicting petitions as to whether a majority of its unit employees wanted union representation.

prospective standard for withdrawal of recognition cases, which would have resulted in a different finding in *Levitz*.

Therefore, I find that Respondent did not engage in unlawful conduct by refusing to recognize the Union.

CONCLUSIONS OF LAW

1. By telling its employee that because of the union employees were not receiving wage increases and by telling its employee that employees could not engage in union activities on company time, Respondent, Parkwood Developmental Center, Inc., engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By unilaterally changing unit employees' medical insurance program by charging bargaining unit employees each per pay period for a portion of individual coverage premiums without notice or bargaining with the Union, Respondent, Parkwood Developmental Center, Inc., violated Section 8(a)(1) and (3) of the Act.

3. Respondent has not otherwise engaged in unfair labor practices as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

In view of my finding that Respondent unilaterally charged its bargaining unit employees for individual health insurance coverage, I order Respondent to make bargaining unit employees whole for all losses suffered during the period beginning February 1, 2003, and ending at the March 8, 2003 expiration of the collective-bargaining agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Parkwood Developmental Center, Inc., Valdosta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling its employees that because of the union employees were not receiving wage increases.

(b) Telling its employees that employees could not engage in union activities on company time.

(c) Unilaterally changing the terms of its collective-bargaining agreement by charging employees for individual health care coverage.

(d) In any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed you by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, make all bargaining unit employees employed during the February 1 to March 8, 2003 period whole for all losses suffered during that period, due to our unlawful change in our collective bargaining agreement with United Food and Commercial Workers International Union, Local 1996, AFL–CIO, CLC.

(b) Within 14 days after service by the Region, post at its facility and office in Valdosta, Georgia, copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 2002.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 10, 2004

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell our employees that they are not receiving wage increases because of the United Food and Commercial Workers International Union, Local 1996, AFL–CIO, CLC.

WE WILL NOT tell our employees they cannot talk about the Union during company time.

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT unilaterally change the terms of our existing collective-bargaining agreement with the Union by charging our employees for individual health insurance coverage.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all bargaining unit employees employed at any time from February 1, 2003, until March 8, 2003, whole for losses suffered during that February 1 to March 8 period because of our unilateral change in their health insurance premiums.

PARKWOOD DEVELOPMENTAL CENTER, INC.